

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 11-76
Fees for Fiscal Year 2011)	
)	
)	

**COMMENTS OF
PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION**

I. INTRODUCTION

PCIA—The Wireless Infrastructure Association (“PCIA”) hereby submits these comments in response to the above captioned Federal Communications Commission (“FCC” or “Commission”) *Notice of Proposed Rulemaking* (“NPRM”) regarding Assessment and Collection of Regulatory Fees for Fiscal Year 2011.¹ PCIA’s frequency coordination customers are directly affected by the assessed regulatory fees; therefore PCIA has a direct interest in the instant proceeding.

In the NPRM, the FCC proposes that fiscal year 2011 Private Land Mobile Radio Service (“PLMRS”) licensing fees for shared use increase 20% from \$20/year for 10 years to \$25/year for 10 years.² The proposed regulatory fees will overly burden PLMRS licensees and do not reflect the factors the Commission must consider in calculating the fees, such as the FCC’s associated costs and the public interest. PCIA urges the FCC to reduce these regulatory fees, or

¹ *In re* Assessment and Collection of Regulatory Fees for Fiscal Year 2011, MD Docket No. 11-76, *Notice of Proposed Rulemaking*, FCC 11-68 (rel. May 3, 2011)(hereinafter “NPRM”).

² *Id.* at App. A, p. 16.

at least not increase them, given the long-term trend in PLMRS licenses, the public interest and the nature of the PLMRS industry.

II. BACKGROUND

Due to the fluidity within the telecommunications industry, the Commission assesses its regulatory fees on an annual basis to evaluate the industry's status and the appropriateness of the associated fees.³ In order to do so, the Commission needs to reassess where it is actually expending its resources and adjust its fees in a commensurate manner so as not to overburden those providing important services, like PLMRS.⁴

The PLMRS base decreased over the past few years, which should reduce the costs associated with regulating PLMRS, and result in either reduced, or at least not increased, PLMRS license fees. Between 2006 and 2010, PLMRS licenses decreased over 30%. It is projected that PLMRS licenses will increase in 2011, up 14% from 2010, but will still be down over 20% since 2006. The increase in licenses in 2011 can be attributed to narrowbanding, which encourages filing for licensing. In addition, these statistics are based on the number of licenses filed for PLMRS at the FCC, which includes Government entities and tax exempt non-profits that do not pay a regulatory fee.⁵

³ Comments of PCIA—The Wireless Infrastructure Association in Assessment and Collection of Regulatory Fees for Fiscal Year 2008, at 5, MD Docket No. 08-56, RM-11312 (filed September 25, 2008)(hereinafter “PCIA September 25, 2008 Comments”).

⁴ *Id.* at 3-4.

⁵ FCC Universal Licensing System (ULS): ULS Home, available at: <http://wireless.fcc.gov/uls/index.htm?job=home> (last accessed May 23, 2011) (Researcher searched for applications that met the below 470 using filters that allowed him to capture those that paid a \$200 regulatory fee. The estimates for all of 2011 are an extrapolation based on the number as of May 20 (the 140 day of the year) multiplied by 365/140. The numbers include some dual-eligible local government agencies that are allowed to file applications in the Industrial Business radio service and tax exempt non-profits that do not pay a regulatory fee, but their numbers comprise a very small percent of the total).

The Commission proposes that PLMRS licensing fees for shared use for fiscal year 2011 increase 20% from \$20/year for 10 years to \$25/year for 10 years.⁶ This is disproportionate to the predicted 14% growth in licenses in 2011, especially in light of the over 20% drop since 2006. In the last six years, from 2005 to 2011, the Commission increased PLMRS licensing fees 150%. The PLMRS licensing fees have increased from \$10/year for 10 years in fiscal year 2005, amounting to \$100 in total fees, to \$20/year for 10 years in fiscal year 2008, amounting to \$200 in total fees, to the current proposal of \$25/year for 10 years for fiscal year 2011, amounting to \$250 in total fees.⁷ These fees represent a significantly increased burden to the PLMRS licensees and do not reflect the Commission's expenditures on PLMRS licensing.

III. DISCUSSION

A. THE INCREASE IN FEES DOES NOT REFLECT THE COMMISSION'S COST OF REGULATING THE PLMRS INDUSTRY

The dramatic increase in fees for PLMRS does not correlate to the decreased Commission resources devoted to processing fewer PLMRS licenses. The Commission is statutorily required to "assess and collect regulatory fees to recover the costs of the following regulatory activities . . . : enforcement activities, policy and rulemaking activities, user information services, and international activities."⁸ The Commission is "required to relate its regulatory fee assessments to the cost of regulating each industry segment,"⁹ meaning as close as

⁶ NPRM at App. A, p. 16.

⁷ Comments of PCIA—The Wireless Infrastructure Association in Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Amendment of Parts 1, 21, 73, 74, and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, at 3-4, MD Docket No. 08-56, RM-11312, WT Docket No. 03-66 (filed May 30, 2008)(hereinafter "PCIA May 30, 2008 Comments").

⁸ 47 U.S.C. §159 (a).

⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, MD Docket 03-83, *Report and Order*, 18 FCC Rcd 15985, 15992 (rel. July 25, 2003).

possible to the actual costs to the Commission of regulating the industry.¹⁰ The actual assessment on the specified categories is then based on the number of employees dedicated to that category, taking into account the “factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities, including such factors as service area coverage, shared use versus exclusive use and other factors that the Commission determines are necessary to the public interest.”¹¹

PCIA believes that the continued diminishment in the Commission’s PLMRS staff indicates that the Commission’s costs, and therefore the proposed regulatory fees, should decrease, or at least not increase.¹² As an FCC-certified frequency coordinator, PCIA interacts extensively with the FCC and perceives a decline in the overall staffing level devoted to PLMRS at the FCC naturally correlated with the reduction in the number of PLMRS licensees.¹³ Because the Act calls for the regulatory fee to be based, in part, through “determining the full-time equivalent number of employees performing the activities described . . . within the Private Radio Bureau,”¹⁴ PCIA urges the Commission to consider the PLMRS staffing levels and related costs and downwardly adjust, or at least not increase, the associated PLMRS fees so that the fees do not overly burden the PLMRS licensees.

B. PLMRS LICENSEES SERVE AN ESSENTIAL ROLE THAT THE COMMISSION SHOULD FACILITATE RATHER THAN BURDEN

The burden on individual PLMRS licensees increased substantially and has become disproportionate to the industry. The long term trend in the amount of PLMRS licenses processed by the Commission resulted in a drop of over 20% since 2006, only to have its

¹⁰ PCIA September 25, 2008 Comments at 5.

¹¹ 47 U.S.C. §159 (b)(1)(A).

¹² PCIA May 30, 2008 Comments at 1.

¹³ *Id.* at 2.

¹⁴ 47 U.S.C. §159 (b)(1)(A).

regulatory fee burden increased by 20% this year alone and over 150% since 2005. The Commission recognizes the fact that “PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities.”¹⁵ The Act requires the fees to be related to “other factors that the Commission determines are necessary in the public interest.”¹⁶ The Commission does not discuss the public interest in its assessment where it describes how it assessed the fees for fiscal year 2011.¹⁷ Given the “essential role” that PLMR systems serve, PCIA believes that it would be in the public interest for the Commission to enable these services to thrive by reassessing and decreasing, or at least not increasing, the fee burden per licensee.¹⁸

C. THE INCREASE IN FEES DOES NOT REFLECT THE NATURE OF THE PLMRS INDUSTRY

The FCC should consider the long-term trends in the PLMRS base and either reduce, or at least not increase, the PLMRS license fees. The Commission can exercise its discretion in assessing how to regulate fees on industries with declining unit bases by considering the industry’s ability to “pass-through” its regulatory fees to its customers.¹⁹ PLMRS licensees are directly affected by increases in regulatory fees because they derive no economic benefit from their use of spectrum, but rather rely on it to improve the efficiencies of their primary operations.²⁰ The PLMRS industry lacks the ability to effectively pass the fees on to its customers, either because of competitive reasons, including that the licensee is the end user, or

¹⁵ NPRM at App. E, ¶42.

¹⁶ 47 U.S.C. §159 (b)(1)(A).

¹⁷ NPRM at ¶¶ 2-4.

¹⁸ PCIA May 30, 2008 Comments at 3-4.

¹⁹ PCIA September 25, 2008 Comments at 5 (citing Reply Comments of The Enterprise Wireless Alliance, MD Docket No. 08-56 (filed June 6, 2008)).

²⁰ *Id.*

other circumstances the Commission deems appropriate.²¹ Therefore, the PLMRS industry should be given special consideration for fee relief because when PLMRS licensing costs increase the costs are “are not defrayed by an offsetting revenue stream.”²² So, as the costs of regulatory requirements increase, PLMRS licensees’ costs increase disproportionately as well.

PCIA urges the Commission to take into consideration the long-term trends in PLMRS base and the nature of the PLMRS industry by reassessing and decreasing, or at least not increasing, the fee burden per PLMRS license.

²¹ *Id.*

²² *Id.* at 3 (citing Reply Comments of The Enterprise Wireless Alliance, MD Docket No. 08-56 (filed June 6, 2008)).

IV. CONCLUSION

PCIA, as a frequency coordinator whose customers are comprised of licensees providing a critical range of services nationwide, appreciates the opportunity to comment on this matter because it affects their ability to operate. For the foregoing reasons, PCIA respectfully requests that the Commission reassess and either reduce, or at least not increase, PLMRS licensing fees based on the decreased FCC costs associated with regulating the PLMRS licenses, the public interest and the change in and nature of the PLMRS industry.

Respectfully submitted,

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